

First, Mr. Bravo pled guilty, pursuant to a written plea agreement, to one count of illegal Deported Alien Found in the United States, in violation of 8 U.S.C. § 1326(a) and (b). In the written plea agreement, Mr. Bravo explicitly waived his right to appeal and/or collaterally attack his conviction or sentence. The Ninth Circuit has long acknowledged that the terms of a plea agreement are enforceable. *See, United States v. Baramdyka*, 95 F.3d 840, 843 (9th Cir. 1996),


1 *cert. denied*, 117 S.Ct. 1282 (1997). Since Mr. Bravo expressly waived his statutory right to appeal
 2 or collaterally attack his sentence in his plea agreement, Mr. Bravo is now precluded from
 3 challenging that sentence pursuant to 28 U.S.C. § 2255. *See, United States v. Abarca*, 985 F.2d
 4 1012, 1014 (9th Cir. 1993) (holding that a knowing and voluntary waiver of a statutory right is
 5 enforceable).

6 Second, Mr. Bravo's written plea agreement did not specify a sentencing guideline range of
 7 12-18 months as Mr. Bravo claims. In fact, section IX of the plea agreement specifically states
 8 "that the sentence is within the sole discretion of the sentencing judge" and that "any estimate of
 9 the probable sentence by defense counsel is a prediction, not a promise, and is **not binding on the**
 10 **Court.** (Emphasis in original.) Additionally, section X, subsection D, states that the "parties have
 11 no agreement to defendant's Criminal History Category." Without a definitive Criminal History
 12 Category, it is not possible to calculate the appropriate guideline range. Hence, Mr. Bravo's written
 13 plea agreement did not specify a guideline range of 12-18 months as he claims. Accordingly,

14 **IT IS ORDERED** that Mr. Bravo's Motion to Vacate, Set Aside or Correct Sentence is
 15 **DENIED.**

16 **IT IS SO ORDERED.**

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 18
 19 4/26/13
 20 date


 GORDON THOMPSON, JR.
 United States District Judge

21 cc: All parties and Probation Department
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